



**THE ATTORNEY GENERAL
OF TEXAS**

**JIM MATTOX
ATTORNEY GENERAL**

November 15, 1990

**Honorable John T. Montford
Chairman
Senate Finance Committee
Texas State Senate
P. O. Box 12068
Austin, Texas 78711**

LO-90-92

Dear Senator Montford:

You have requested our opinion regarding a rider to article 5, section 8 of the current General Appropriations Act. Acts 1989, 71st Leg., ch. 1263, at 5764. That provision reads, in pertinent part:

Sick leave with pay may be taken when sickness, injury, or pregnancy and confinement prevent the employee's performance of duty or when the employee is needed to care and assist a member of his immediate family who is actually ill. For purposes relating to regular sick leave, immediate family is defined as those individuals related by kinship, adoption, marriage or foster children who are so certified by the Department of Human Services who are living in the same household or if not in the same household are totally dependent upon the employee for personal care or services on a continuing basis.

In the situation you describe, an employee of the Texas Department of Public Safety in Lubbock has an adult daughter who also lives in Lubbock but is not a member of the employee's household. The daughter, who is married and the mother of a 20-month old child, is afflicted with leukemia and requires periodic travel to Houston, for intervals of 10 days to two weeks, in the company of a person who is able to provide her with personal care. The daughter's husband has used all leave available to him in his employment, and the employee now wishes to use a portion of his approximately 1500 hours of accumulated sick leave in accompanying his daughter to Houston. Apparently, the Department of Public

Safety does not believe that the daughter is "totally dependent upon the employee for personal care or services on a continuing basis."

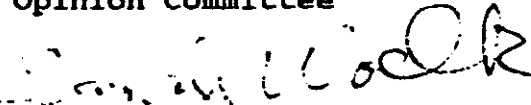
In our opinion, this view is misplaced. If the daughter requires assistance in making the trips, and if the employee is the person who chooses to accompany her, she is clearly "totally dependent" upon him for the duration of each trip. Moreover, since the daughter requires treatment at regular intervals, it may fairly be said that she is dependent upon the employee "on a continuing basis."

There seems to be no doubt that the employee in question falls squarely within the contemplation of the legislature in adopting this rider. We believe that, under the circumstances you have described, the employee is entitled to use his accumulated sick leave to accompany his daughter to Houston for the purpose of receiving treatment for leukemia.

Yours very truly,



Rick Gilpin, Chairman
Opinion Committee



Sarah Woelk, Chief
Letter Opinion Section
Opinion Committee

RG/SW/lcd

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